

Before the
Federal Communications Commission

Washington, DC 20554

In the Matter of
Amendment of Part 97 of the Commission's
Amateur Service Rules to Eliminate
Morse Code Testing

RM- 10787

**Comment in Support of NCVEC's
Petition for Rule Making**

1. I support the petition filed by the National Conference of Volunteer Examiner Coordinators (NCVEC).
2. The NCVEC petition request the Commission to delete the Morse code exam, 47 C.F.R. §97.503(a)¹, revise other rules affected by the deletion, and authorize the Technician Class the same privileges as the Technician Plus Class.
3. The NCVEC petition does not request revision of any other rules; hereby **presenting the Commission with a significant judicial question; whether the Commission can continue the Amateur Radio Service as a radiotelegraphy service, or must it revise its rules to allow the Service to become a modern radio communications service where otherwise qualified citizens can use other emission types.**
4. The **Commission should take this opportunity to settle the decades old debate concerning Morse code examinations by holding a separate proceeding on the NCVEC's petition, along with other petitions requesting on the deletion of the Morse code exam, 47 C.F.R. §97.503(a).**

5. A separate proceeding will allow all other Petitions to amend Operator License Grant², Authorized Frequency Bands³, Authorized Emission Types⁴, Emissions Standards⁵, and Transmitter Power Standards⁶, to be considered by the Commission on their own merit without interference and distractions of the endless Morse code debate.
6. The Amateur Radio community will never reach a consensus of the Morse code exams matter, as both sides have long ago reached intractable positions and no new arguments have been advanced for years.
7. The subject matter of NCVEC petition has been subject to extensive debate in public proceedings before the Commission, amateur radio publications, and on Internet newsgroups.
8. In WT Docket 98-143 where the Commission issued its *1999 License Restructuring Decision*⁷, the Amateur Radio community submitted 2,200 comments with the vast majority explicitly stating their opinions regarding Morse code examinations. A new public proceeding will only result in thousands of repetitive comments being submitted to the Commission with no new fact or arguments.

¹ 47 C.F.R. §97.503(a) provides: "A telegraphy examination must be sufficient to prove that the examinee has the ability to send correctly by hand and to receive correctly by ear texts in the international Morse code at not less than the prescribed speed, using all the letters of the alphabet, numerals 0-9, period, comma, question mark, slant mark and prosigns AR, BT and SK. Element 1: 5 words per minute."

² 47 C.F.R. §97.9, Operator License Grant.

³ 47 C.F.R. §97.301, Authorized Frequency Bands.

⁴ 47 C.F.R. §97.305, Authorized Emission Types.

⁵ 47 C.F.R. §97.307, Emissions Standards.

⁶ 47 C.F.R. §97.313, Transmitter Power Standards

⁷ *1999 License Restructuring Decision*, 1998 Biennial Regulatory Review – Amendment of Part 97 of the Commissions' Amateur Service Rules, *Report and Order*, WT Docket No. 98-143, FCC 99-143 (1999), adopted December 1, 1998, release January 15, 1999.

9. Pursuant to 5 U.S.C. §553(b)(3)(B)⁸, 5 U.S.C. §553(d)(1) & (3)⁹, 47 C.F.R §303(r)¹⁰ and 47 C.F.R §1.3¹¹; because of international radio regulation changes¹²; Commission decisions;^{13 14} “due process of law” issues, “discrimination” issues, and as matter of law¹⁵; the Commission should delete of 47 C.F.R. §97.503(a) from its rules.¹⁶

10. As result of deleting 47 C.F.R. §97.503(a), the Technician and Technician Plus Classes will have passed the same or equivalent examination Elements¹⁷, and will receive the same exam Element¹⁸ credit when they apply for a license upgrade. The Commission should authorize the two license Classes to use the same frequency bands, emission types, and transmitter power standards.

11. The NCVEC’s Appendix of proposed amendments is not in the format required by the Federal Register.

12. Attached to this Comment are alternate proposed amendments to Part 97 rules that better implement NCVEC’s petition.

⁸ 5 U.S.C. §553(b)(3)(B) provides: “General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include - either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except when notice or hearing is required by statute, this subsection does not apply - when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

⁹ 5 U.S.C. §553(d)(1) & (3) provides: “The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except - a substantive rule which grants or recognizes an exemption or relieves a restriction; or as otherwise provided by the agency for good cause found and published with the rule.”.

¹⁰ 47 C.F.R. §303(r) provides: “Except as otherwise provided in this chapter, the Commission from time to time, as public convenience, interest, or necessity requires, shall - Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.”

¹¹ 47 C.F.R. §1.3 provides: “The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”

¹² ITU radio regulation S25.5, amended July 4, 2003 at the World Radio Conference 2003, Geneva, Switzerland.

¹³ *1990 Codeless Technician Decision*, Amendment of Part 97 of the Commissions’s Rules Concerning the Establishment of a Codeless Class of Amateur Operator License, *Report and Order*, PR Docket No. 90-55, 5 FCC Rcd 7631 (1990), adopted December 13, 1990, released December 27, 1990, page 7631 to 7637.

¹⁴ *1999 License Restructuring Decision*, *supra*.

¹⁵ 5 U.S.C. §706(2)(A), Scope of Review, The reviewing court shall * (2) hold unlawful and set aside agency action, findings, and conclusions found to be - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; *.

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¹⁷ 47 C.F.R. §97.503(b)(1), Element 2.

¹⁸ 47 C.F.R. §97.505(a)(4) and Proposed 47 C.F.R. §97.505(a)(3) in Appendix of this Petition.

Due Process of Law Issues

13. Some individuals and organizations argue that the Morse code exam, 47 C.F.R. §97.503(a), violates the applicants Constitutional rights.

14. The Commission regulates the Amateur Radio service and permits a citizen to operate on Amateur Radio band frequencies by the issuance of license. Black's Law Dictionary, 6th Edition, defines a **license** as:

The permission by competent authority to do an act which, without such permission, would be illegal, a trespass, a tort, or otherwise not allowed. *People v. Henderson*, 391 Mich. 612; 218 N.W.2d 2,4.

A permit, granted by an appropriate governmental body, generally for a consideration, to a person, firm or corporation to pursue some occupation or to carry on some business subject to regulations under **police power**. A license is not a contract between the state and the licensee, but is a mere personal permit. *Rosenblatt v. California State Board of Pharmacy*, 69 Cal. App.2d 69; 158 P.2s 199, 203

Neither is it property or a property right. *American States Water Service Co of California v. Johnson*, 31 Cal.App.2d 606; 88 P2d 770, 774

15. The Amateur Radio license is issued under the authority of the government's **police power** and subject to Constitutional limitations. Black's Law Dictionary, 6th Edition, defines a **police powers** as:

An authority conferred by the American constitutional system in the Tenth Amendment, U.S. Constitution, upon the individual states, and, in turn, delegated to local government, through which they are enabled to establish a special department of police; adopt such laws and regulations as tend to prevent the commission of fraud and crime, and secure generally the comfort, safety, morals, health, and property of its citizens by preserving the public order, preventing a conflict of rights in the common intercourse of the citizens, insuring to each an uninterrupted enjoyment of all privileges conferred upon him or her by general laws.

The power of State to place restraints on the personal freedom and property rights of persons for the protection of the public safety, health, and morals or the promotion of the public convenience and general prosperity. The police power is subject to limitations of the federal and State constitutions, and especially to the requirement of **due process**.

Police power is the exercise of sovereign right of government to promote order, safety, security, health, morals and general welfare **within constitutional limits** and is an essential attribute of government. *Marshall v. Kansas City, Mo.*, 355 S.W.2d 877, 883.

16. Police power are subject to the **due process of law** limitations. Black's Law Dictionary, 6th Edition, defines a **due process rights** as:

All rights which are of such fundamental importance as to require compliance with **due process** standards of fairness and justice. Procedural and substantive rights of citizens against government action that threaten the denial of life, liberty, or property.

and due process of law as:

The concept of "due process of law" as it is embodied in the Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a reasonable and substantial relation to the object being sought. U. S. v. Smith, D.C.Iowa, 249 F.Supp. 515, 516.

17. Allocation HF frequency bands by Morse code examinations for use of thousands of other emissions types is unreasonable, unnecessary, arbitrary and capricious; and no relation with basis and purpose of the Amateur radio service.

18. The Commission acknowledges its limitation, when Commissioner Harold W. Furchtgott-Roth stated that the 1998 Biennial Review requires the Commission review its regulations to "determine whether any such regulation is no longer in the public interest" and to "repeal or modify" those regulations not meeting the requirement.

19. The Petitioner alleges that the Morse code exam raises "due process of law" questions. However, it is not necessary for the Commission to delete the Morse code exam, 47 C.F.R. §97.503(a), on "due process of law" grounds; as the Commission already has substantial public comments and decisions^{19 20} on the record to support and justify the deletion of 47 C.F.R. §97.503(a).

¹⁹ 1990 Codeless Technician Decision, *supra*.

²⁰ 1999 License Restructuring Decision, *supra*.

Discrimination Issues

20. Some individuals and organizations argue the Morse code exam, 47 C.F.R. §97.503(a), is a form of discrimination.

21. Black's Law Dictionary, 6th Edition, defines a **discrimination** as:

In constitutional law, the effect of a statute or established practice which confers particular privileges on a class arbitrarily selected from a large number of persons, all of whom stand in the same relation to the privileges granted and between whom and those not favored **no reasonable distinction can be found**.

A failure to treat all persons equally where **no reasonable distinction can be found** between those favored and those not favored. *Baker v. California Land Title Co.*, D.C.Cal., F.Supp. 235, 238, 239.

22. The allocation of frequency privileges on the HF bands by the use of a Morse code proficiency exam is not a reasonable distinction for such an allocation. Morse code exams are discriminatory.

23. The Petitioner alleges that the Morse code exam is discrimination, within the meaning of the legal definition given above. However, it is not necessary for the Commission to delete the Morse code exam, 47 C.F.R. §97.503(a), on those grounds; as the Commission already has substantial public comments and decisions on the record^{21 22} to support and justify the deletion of 47 C.F.R. §97.503(a).

²¹ 1990 Codeless Technician Decision, *supra*.

²² 1999 License Restructuring Decision, *supra*.

Morse Code Exams No Longer Serves A Safety Or Emergency

Communications Purpose

24. There was a very illuminating comment²³ submitted for the 1999 License Restructuring Decision by Cary Mangum²⁴, W6WWW, based on years of experience with emergency communications in California. Emphasis added.

In the 1990's very significant changes have occurred affecting the usefulness of Amateur radio licensee to government. Today we face information systems that did not exist in the past. As we look to the year 2000 we need Amateur licensees capable of providing a variety of services in communications, typically computer based.

Thus, the use of code has declined to where it is no longer viable for government.

- a. **California eliminated the use of CW some years ago.** Although we have a large and extensive communications center staffed for and with Amateur licensees, **we had not used CW in decades.** We retained a CW net until 1995, but **it served no essential purpose,** just once-a-week training for 3-5 participants. **No county governments participated for years.**
- b. The **US Coast Guard also eliminated the use of Morse code several years ago,** which is further evidence of its lack of applicability to today's communications needs.

Today, our information systems are computer based and operate by both wire and wireless. **If the Amateur of today is not familiar with computers, he/she is of little use. A background in computer experience and knowledge is far and away more important than that of CW.**

When I became licensed in 1941 Amateur radio was the means of alternative communication. **Today, the computer provides that, hence thousands of those who would otherwise be FCC Amateur service licensees never apply because the service does not attract them. Until we recognize that factor the service will not grow significantly, nor do we get the new blood of technically oriented people to spark the new innovations so badly needed.**

To make matters worse, to a large degree an 'old-boy network' exists in Amateur radio; one that grew up with "you must pass the code" concept. Like people everywhere "what's good enough for me is good enough for you" is the mindset of many of today's Amateurs. **Without the ability to look to the future, or grasp the many changes occurring around them, they would keep practices long since useless. In government today we pass data digitally, not by CW or voice radio.** In fact, there are government agencies who seek to do away with radio entirely.

²³ Commission's Electronic Comment Filing System (ECFS), Proceeding: 98-143, Date: 12/29/98, Filed on behalf of: Cary Mangum, see paragraph 6 to 12, Internet address: http://gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi.

²⁴ Cary Mangum, California Sates RACES and ACS Officer, California Emergency Coordinator.

One of my constant battles is to keep some radio capability functioning in government. There is a new breed of administrators who focus on the bottom dollar, not redundancy. Often they have no experience in communications failures, and their digital computer networks have not failed. They see no need for radio. So, they no longer fund or support radio programs. The federal Highway Authority (FHWA) is one instance of an agency that no longer supports High Frequency radio. It's a very real every-day battle. Our fiscal year has just begun and yesterday I was informed that there are no funds for communications equipment as it all went for computers and computer systems.

So, I urge the reduction of code requirement to 5 wpm at general license level as it is not essential skill qualifier in today's world. **When it is possible to do so under international radio regulations, I further urge the Commission to drop the CW requirement entirely. It is not relevant to the year 2001 and subsequent real-world needs in communications.**

The 1990 Codeless Technician Decision

25. In *1990 Codeless Technician Decision*,²⁵ the Commission dealt with the matter by deleting the Morse code examination as a requirement for a new Technician Class license²⁶. In its Report and Order, the Commission stated:

- (a) For the amateur service to achieve its purpose it must have the participation of as many qualified persons as possible who desire to pursue that purpose. Modern commercial and military electronic systems require engineers to design them, technicians to install and maintain them, and a technologically literate citizenry that can use them. The amateur service should, as it has in the past, attract technically inclined persons, particularly the youth of our country, and encourage them to learn and to prepare themselves where the United States needs expertise. We do not foresee that telegraphers will be in as great demand by future systems as will electronics and communications experts.²⁷
- (b) Telegraphy skill has been required for each person who has ever been issued an amateur operator license in the United States, including the current 493,000 licensees. Mastering the Morse Code was an arduous task for many of these licensees, and by developing their telegraphy skills they expressed their intense desire to become amateur operators. It is understandable, therefore, that there are licensees who are reluctant to share the amateur service frequencies with new licensees who have not made a similar effort to master the Morse code. We conclude, however, that telegraphy skill is not so essential to proper operation of a station that transmits exclusively above 30 MHz such as to justify turning away otherwise qualified persons who do not possess the skill. The *Notice*, furthermore, did not propose to delete the telegraphy skill requirement for a licensee to be the control operator of a station

²⁵ 1990 Codeless Technician Decision, *supra*.

²⁶ 47 C.F.R. §97.501(c).

²⁷ 1990 Codeless Technician Decision, *supra*, paragraph 13.

transmitting below 30 MHz where telegraphy communications take place extensively and worldwide communications are possible. The sharing of frequencies between codeless class licensees and other licensees can take place on frequency bands above 30 MHz where telegraphy operation is minimal and where the transmission of the more modern emission types such as data, image, phone, pulse, RTTY, and spread spectrum, predominate.²⁸

- (c) We do not concur with the comments alleging that the passing of a telegraphy examination is an indication of the examinee's good character, high intelligence, cooperative demeanor, or willingness to comply with our rules. These traits are also found in individuals who have not passed a telegraphy examination rather than being exclusive to those who have passed such a test. For regulatory purposes, passing a telegraphy examination is no more and no less than proof of the examinee's ability to send and receive texts in Morse code at some specified rate. With respect to comments that make claims for the superiority of telegraphy over other types of communications, we do not consider these arguments as germane to this proceeding. The *Notice* did not propose to discontinue the authorization of telegraphy CW emission types on any amateur service frequency. The amateur service in the future, as it has in the past, can provide to those who personally desire to do so the opportunity to communicate by telegraphy.²⁹

The 1999 License Restructuring Decision

26. In 1999 License Restructuring Decision,³⁰ the 13 and 20 words per minute Morse code exams³¹ were deleted as a license requirement. In its Report and Order, the Commission stated:

- (a) the public interest will best be served by reducing the telegraphy examination requirement to the minimum requirement that we have found that meets the *Radio Regulation*³²;
- (b) an individual's ability to demonstrate increased Morse code proficiency is not necessarily indicative of that individual's ability to contribute to the advancement of the radio art³³;
- (c) such a license qualification rule is not in furtherance of the purpose of the amateur service and we do not believe that it continues to serve a regulatory purpose³⁴;

²⁸ 1990 Codeless Technician Decision, *supra*, paragraph 14.

²⁹ 1990 Codeless Technician Decision, *supra*, paragraph 15.

³⁰ 1999 License Restructuring Decision, *supra*.

³¹ Former rules 47 C.F.R. §97.503(a)(2), Element 1B, 13 wpm; and 47 C.F.R. §97.503(a)(3), Element 1C, 20 wpm.

³² 1999 License Restructuring Decision, *supra*, paragraph 25.

³³ 1999 License Restructuring Decision, *supra*, paragraph 25.

³⁴ 1999 License Restructuring Decision, *supra*, paragraph 25.

- (d) the amateur service is fundamentally a technical service, the emphasis on Morse code proficiency as a licensing requirement does not comport with the basis and purpose of the service³⁵;
- (e) reducing the emphasis on telegraphy proficiency as a licensing requirement will allow the amateur service to, as it has in the past, attract technically inclined persons, particularly the youth of our country, and encourage them to learn and to prepare themselves in the areas where the United States needs expertise³⁶; and
- (f) telegraphy proficiency is not a significant factor in determining an individual's ability to provide or be prepared to provide emergency communications³⁷.

Morse Code Examination Is Not In Conformity With Law

27. Before July 4, 2003, the ITU rule S25.5 required applicants to demonstrate Morse code proficiency to Commission before receiving an Amateur Radio license to use frequencies below 30 MHz.

28. On July 4, 2003, the WRC 2003 amended ITU rule S25.5 to require the Commission to “determine whether or not a person seeking a licence to operate an amateur station shall demonstrate the ability to send and receive texts in Morse code signals.”

29. Based on prior Commission decisions, the Morse code exam, 47 C.F.R. §97.503(a), is unnecessary, serves no regulatory purpose, and not comport with the basis and purpose of the service.

30. 5 U.S.C. §706(2)(A), “Scope of review”, that provides:

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall -

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be -
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;

³⁵ 1999 License Restructuring Decision, *supra*, paragraph 30.

³⁶ 1999 License Restructuring Decision, *supra*, paragraph 30.

³⁷ 1999 License Restructuring Decision, *supra*, paragraph 31.

- (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (D) without observance of procedure required by law;
- (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
- (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

31. Because the Morse code exam is unnecessary, serves no regulatory purpose, and is not comport with the basis and purpose of the service; 47 C.F.R. §97.503(a) is no longer in conformity with 5 U.S.C. §706(2)(A).

32. The only way to bring the Amateur Radio Service rules into conformity with 5 U.S.C. §706(2)(A) is to completely delete 47 C.F.R. §97.503(a).

33. Some petitioners and commenters will ask the Commission to continue 47 C.F.R. §97.503(a) in some less intrusive way, this will only temporarily postpone Morse code exam complaints.

34. The fact that the Morse code exam, 47 C.F.R. §97.503(a), is no longer in conformity with 5 U.S.C. §706(2)(A) is sufficient ground for the Commission to summarily delete the rule.

Conclusion

35. The Morse code exam question has been before the Commission and the Amateur Radio community for decades. No consensus is possible. No new fact or arguments can be presented to the Commission.

36. The Commission's Morse code exam rule, 47 C.F.R. §97.503(a), is:

- ❑ Unnecessary
- ❑ Violates "due process of law" rights
- ❑ Discriminatory, within the meaning of the legal definition
- ❑ Useless for government, military, and public service emergency communications

37. The Commission has decided in prior decision that the Morse code exams:

- ❑ Does not attract technically inclined persons, particularly the youth of our country,
- ❑ Produces radio telegraph operators that are no longer needed,
- ❑ Does not insure proper operation of a station that transmits above 30 MHz,
- ❑ Does not indicate the examinee's good character, high intelligence, cooperative demeanor, or willingness to comply with the Commission's rules,
- ❑ Is not necessarily indicative of an individual's ability to contribute to the advancement of the radio art,
- ❑ Does not further the purpose of the amateur service,
- ❑ Does not serve a regulatory purpose,
- ❑ Does not comport with the basis and purpose of the service, and
- ❑ Is not a significant factor in determining an individual's ability to provide or be prepared to provide emergency communications.

38. The Commenter alleges that the Morse code exam is:

- ❑ Arbitrary and capricious,
- ❑ Not in conformity with 5 U.S.C. §706(2)(A).

39. The Commission should amend Part 97 of the Amateur Service rules to:
- (A) delete 47 C.F.R. §97.503(a),
 - (B) revise other rules affected by the deletion of 47 C.F.R. §97.503(a), and
 - (C) authorize the Technician Class the same privileges as the Technician Plus Class.
40. The Commission should adopt the proposed amendments to Part 97 provided in attached Appendix of this Comment.
41. The Commission should hold a separate proceeding on the Morse code exam matter.
42. The Commission should consolidate the petitions filed by P. V. Coppola, T. M. Coppola, and P. A. Coppola (RM-10782); Kiernan K. Holliday (RM-10783); Eric R. Ward (RM-10785); No Code International (RM-10786); and National Conference of Volunteer Examiner Coordinators (RM-10787).
43. The Commission should adopt the proposed amendments to Part 97 immediately by an expedited procedure pursuant to 5 U.S.C. §553(b)(3)(B)³⁸, 5 U.S.C. §553(d)(1) & (3)³⁹, 47 C.F.R. §303(r)⁴⁰ and 47 C.F.R. §1.3⁴¹.
44. **Or, if the Commission for good cause finds that 47 C.F.R. §97.503(a) is not in conformity with 5 U.S.C. §706(2)(A), summarily delete or waive the rule.**

³⁸ 5 U.S.C. §553(b)(3)(B) provides: “General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include - either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except when notice or hearing is required by statute, this subsection does not apply - when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

³⁹ 5 U.S.C. §553(d)(1) & (3) provides: “The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except - a substantive rule which grants or recognizes an exemption or relieves a restriction; or as otherwise provided by the agency for good cause found and published with the rule.”

⁴⁰ 47 C.F.R. §303(r) provides: “Except as otherwise provided in this chapter, the Commission from time to time, as public convenience, interest, or necessity requires, shall - Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.”

⁴¹ 47 C.F.R. §1.3 provides: “The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”

August 31, 2003

Respectfully submitted

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Appendix - Proposed Rules

Proposed changes to Part 97 of Chapter I of Title 47 of the Code of Federal Regulations to delete the Morse code exam, and to authorize Technician Class the same privileges as Technician Plus Class.

1. Section 97.301 is amended by revising paragraph (e) to read as follows. The frequency tables in paragraphs 97.301(a), (b), (c), (d) and (e) remain unchanged.

§97.301 Authorized frequency bands.

* * * * *

- (e) For a station having a control operator who has been granted an operator license of Novice, Technician Plus, or Technician Class:

Wavelength band	ITU Region 1	ITU Region 2	ITU Region 3	Sharing requirements, see §97.303, paragraph:
HF	MHz			
80 m	3.675-3.725	3.675-3.725	3.675-3.725	(a)
40 m	7.050-7.075	7.10-7.15	7.050-7.075	(a)
15 m	21.10-21.20	21.10-21.20	21.10-21.20	
10 m	28.1-28.5	28.1-28.5	28.1-28.5	
VHF	MHz			
1.25 m	--	222-225	--	(a)
UHF	MHz			
23 cm	1270-1295	1270-1295	1270-1295	(h), (i)

2. Section 97.307 is amended by revising paragraphs (f)(9) and (f)(10) to read as follows:

§97.307 Emission standards.

* * * * *

(f) * * * * *

(9) A station having a control operator holding a Novice, Technician Plus, or Technician Class operator license may only transmit a CW emission using the international Morse code.

(10) A station having a control operator holding a Novice, Technician Plus, or a Technician Class operator license may only transmit a CW emission using the international Morse code or phone emissions J3E and R3E.

* * * * *

3. Section 97.313 is amended by revising paragraph (c)(2) to read as follows:

§97.313 Transmitter power standards.

* * * * *

(c) * * * * *

(2) The 28.1-28.5 MHz segment when the control operator is a Novice, Technician Plus, or Technician Class operator; or

* * * * *

4. Section 97.501 is amended by revising paragraphs (a) and (b) to read as follows.

§97.501 Qualifying for an amateur operator license.

* * * * *

- (a) Amateur Extra Class operator: Elements 2, 3, and 4;
- (b) General Class operator: Elements 2, and 3;

* * * * *

5. Section 97.503 is amended by deleting paragraph (a), and re-sequencing paragraph (b) as paragraph (a).

§97.503 Element standards.

- (a) A written examination must be such as to prove that the examinee possesses the operational and technical qualifications required to perform properly the duties of an amateur service licensee. Each written examination must be comprised of a question set as follows:
 - (1) Element 2: 35 questions concerning the privileges of a Technician Class operator license. The minimum passing score is 26 questions answered correctly.
 - (2) Element 3: 35 questions concerning the privileges of a General Class operator license. The minimum passing score is 26 questions answered correctly.
 - (3) Element 4: 50 questions concerning the privileges of an Amateur Extra Class operator license. The minimum passing score is 37 questions answered correctly.

6. Section 97.505 is amended by revising paragraphs (a)(1), (a)(2) and (a)(3); deleting paragraphs (a)(5), (a)(7), and (a)(9); and re-sequencing paragraphs (a)(6) and (a)(8) as paragraphs (a)(5) and (a)(6).

§97.505 Element credit.

(a) * * *

- (1) An unexpired (or expired but within the grace period for renewal) FCC-granted Advanced Class operator license grant: Elements 2, and 3.
- (2) An unexpired (or expired but within the grace period for renewal) FCC-granted General Class operator license grant: Elements 2, and 3.
- (3) An unexpired (or expired but within the grace period for renewal) FCC-granted Technician Plus Class operator license grant: Elements 2.
- (4) * * *
- (5) A CSCE: Each element the CSCE indicates the examinee passed within the previous 365 days.
- (6) An expired FCC-issued Technician Class operator license document granted before March 21, 1987: Element 3.

(b) * * * * *

7. Section 97.507 is amended by revising paragraphs (a), (a)(2), and (c); and deleting paragraph (d).

§97.507 Preparing an examination.

- (a) Each written question set administered to an examinee must be prepared by a VE holding an Amateur Extra Class operator license. A written question set may also be prepared for the following elements by a VE holding an operator license of the class indicated:
 - (1) * * *
 - (2) Elements 2: Advanced, General, Technician Plus, or Technician Class operators.
- (b) * * *
- (c) Each written question set administered to an examinee for an amateur operator license must be prepared, or obtained from a supplier, by the administering VEs according to instructions from the coordinating VEC.

8. Section 97.509 is amended by revising paragraph (f); deleting paragraph (g); and re-sequencing paragraphs (h) through (m) as paragraphs (g) through (l).

§97.509 Administering VE requirements.

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- (f) No examination that has been compromised shall be administered to any examinee. The same question set may not be re-administered to the same examinee.
- (g) Upon completion of each examination element, the administering VEs must immediately grade the examinee's answers. The administering VEs are responsible for determining the correctness of the examinee's answers.
- (h) When the examinee is credited for all examination elements required for the operator license sought, 3 VEs must certify that the examinee is qualified for the license grant and that the VEs have complied with these administering VE requirements. The certifying VEs are jointly and individually accountable for the proper administration of each examination element reported. The certifying VEs may delegate to other qualified VEs their authority, but not their accountability, to administer individual elements of an examination.
- (i) When the examinee does not score a passing grade on an examination element, the administering VEs must return the application document to the examinee and inform the examinee of the grade.
- (j) The administering VEs must accommodate an examinee whose physical disabilities require a special examination procedure. The administering VEs may require a physician's certification indicating the nature of the disability before determining which, if any, special procedures must be used.
- (k) The administering VEs must issue a CSCE to an examinee who scores a passing grade on an examination element.
- (l) Within 10 days of the administration of a successful examination for an amateur operator license, the administering VEs must submit the application document to the coordinating VEC.